

TOWN OF TIVERTON
ZONING BOARD OF REVIEW
MINUTES

March 2, 2016

The following petitions were received and were heard by the Tiverton Zoning Board of Review on Wednesday, March 2, 2016 at 7:00 p.m. at the Tiverton Town Hall, 343 Highland Road.

Members present: Chairwoman Lise Gescheidt, David Collins, John Jackson, Richard Taylor, Wendy Taylor Humphrey, George Alzaibak (alternate).

Also present were: Peter Skwirz, Esquire, Town Solicitor, Neill Hall, Building Official, and Mary Ann Escobar, Court Reporter.

1. A petition has been filed by Mark and Patricia DePiero of Ramsey, NJ requesting a special use permit to Article VII Section 4.b. of the Tiverton Zoning Ordinance in order to raze an existing dwelling and construct a new dwelling with balcony at 292 High Hill Road, Tiverton, RI being Plat 806 Lot 164 on Tiverton Tax Assessor's maps closer to the front, side and rear yard setbacks than required and exceeding lot coverage in a R80 zoning district.

DECISION: Mr. and Mrs. DePiero appeared before the board with their engineer, Tom Principe. Mr. Principe has an engineering firm in Rhode Island.

Mr. Principe describes the project as follows: The DePieros wish to raze the current dwelling and construct a new dwelling. Mr. Principe stated that the current dwelling is in disrepair and sits on a concrete block foundation. The current septic system is a cesspool. They wish to open up the interior layout of the home.

The existing footprint of the house is approximately 815.5 square feet which also includes the current 107 square foot deck. They wish to rebuild their new home on this footprint, which will increase the existing lot coverage by three percent. The current percentage is 34 percent and this will increase it to 37 percent and will be at 902.8 square feet. The new home will have a second floor, where there will be two bedrooms and a bathroom. The first floor will have a kitchen, bathroom, and living room area.

They currently have a 1.4 foot front yard setback which they will increase to 1.6 foot. The current side yard setback is 2.9 feet and they will be increasing it to 3.0. The current rear yard setback is 5.5 feet and they are not changing the rear yard setback at all.

The current height of the existing dwelling is 14 to 15 feet high. They will be increasing the height to no higher than 25 feet to meet the zoning ordinance. The new foundation will only be constructed for a crawl-space basement.

The septic system will be a bottomless sand filter, built specifically for this property in a triangular style layout. It is designed with a pre-treatment tank and a pump chamber that will pump effluent after it's treated up into the northwest corner which is the furthest away from the neighboring wells. DEM has approved this design approximately four to six weeks ago. There is an existing well located off of the southeast corner of the property

Tracey Hall, Licensed Realtor from Keller Williams, testified that she has gone down to this property and neighborhood. She stated in her opinion this will be an improvement to the neighborhood and will also increase the value of the neighboring properties.

Mr. Principe once again spoke as to the criteria for the special use permit as follows:

1. That the public convenience and welfare will be served
2. That it will not be detrimental to the public health, safety, morals or welfare
3. That it is compatible with the neighborhood and will not adversely affect the characteristic of the neighborhood
4. That it will not create a nuisance in the neighborhood nor hinder vehicular or pedestrian traffic
5. That it will have adequate provision made for water and sewer services
6. That it will be compatible with the Comprehensive Community Plan.

Mr. Collins had some questions regarding the need for the three percent expansion. Mrs. DiPiero explained that the current layout of the inside of the house does not flow. That the new house will have a better design for the kitchen and living room of the home and that it will accommodate her children and future grandchildren.

Mr. Alzaibak voiced concerns about future development of this dwelling. He stated that if the board does grant this relief, that the petitioners not build any exterior decks or extensions to this property. He stated that this whole area has been building bigger and bigger homes and does not want to see anything bigger than what was submitted tonight to this Board.

The Board ended the public comments to this hearing and began their deliberations. The Board is concerned with the growing community in this area, that these summer cottages are now becoming full time residences. The Board does understand that this dwelling is in major need of repair and does not wish to stop the owners from improving their property. Ms. Taylor-Humphrey stated that she finds it hard to incorporate the criteria for special use permit and believes that a variance is more appropriate for this petition, but realizes that this is how this particular petition must be approved, through the special use permit. Ms. Gescheidt was in agreement with Ms. Taylor-Humphrey.

Mr. Collins made a motion to grant the relief requested for the side, rear and back yard setbacks based on the fact that there is no way a structure could be built on this property without giving this petitioner relief. He stated that they are asking to build a very similar style footprint and they are only increasing it by 3 percent, which he feels is very minimal and will have no significant impact to the neighborhood. Mr. Collins also stated that he believed the public welfare will be served as they are removing an old cesspool and replacing it with a new state of the art septic system.

The dimensional relief will be as follows: the front yard setback will be 1.6 feet, the side yard setback will be 3.0 feet and the rear yard setback will remain as 5.5 feet making the lot coverage 37 percent.

The Board also would like certain conditions to be made a part of this motion:

1. That there will be no additional porches or decks added to this property
2. That the height of the dwelling does not exceed 25 feet as per zoning ordinance
3. That the proposed balcony will not exceed any of the setbacks as stated above.
4. That the footprint plans submitted will comply with all setbacks as stated above.

Mr. Jackson seconded the motion. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Taylor Humphrey.

2. Solicitor (Discussion and action on evidence required for remanded hearing on McInnis appeal) Attorney Skwirz gave a brief synopsis of what has been happening with this matter. He stated verbatim as follows: *"This is a matter that's been remanded to the board. It was appealed to superior court and the court sent it back to the board. Initially, this began as an appeal of the planning administrative officer's action in 2008. Essentially a master plan was submitted for a piece of property located in the town -- and I can give you the assessors plat and lot on that -- but essentially the administrative officer ruled in 2008 that it was incomplete when submitted. That ruling was then appealed to the zoning board sitting as the zoning board of appeals and the decision of the administrative officer was upheld. There was an appeal to the superior court. The superior court reviewed it. In 2011 there was a decision that remanded the matter back to the zoning board so that the Appellant, Mr. McInnis, who was taking the appeal could present further evidence. He didn't take up the remand hearing right away and instead a separate development was pursued for that piece of property which was subsequently denied.*

When that was denied, he went to take up the remand hearing again. We went to court briefly to determine if he could at that point since there's been such a long delay and the court said, yes, he can go forward with the remand hearing and it will be up to the board to determine what evidence that should be taken. The reason that it's on the agenda tonight instead of simply being put on for appeal is because an issue arose while the case was being decided in superior court the then administrative officer whose ruling was originally appealed left the employment of the town and the applicant obtained an affidavit that was signed by the then administrative officer claiming that the then planning board Chairman Noel Berg and the then town solicitor Andy Teitz had

essentially forced him to rule that the application was incomplete and if he had his way he would have ruled that it was complete.”

So the applicant, Mr. McInnis, when he comes before you in the remand hearing is going to present this affidavit. The reason we have set it down for this hearing tonight is because we are looking to reach out to Mr. Berg and Mr. Teitz and either see if we can get them to agree to a deposition which we could present you the transcript with or if we can schedule a time for them to come here and that way you would be presented with the evidence of Mr. McInnis, the Appellant, the affidavit as well as the people that are mentioned in the affidavit to give their side of the story”

Attorney Karen Browning, attorney for Mr. McInnis, appeared before the board and was in agreement with the information as stated by Attorney Skwirz. Ms. Browning stated for the record that they have not finalized a list of intended exhibits by any means, but do intent to present the affidavit and parties who are listed in the affidavit and any underlying discovery needed to flush out the facts in the affidavit.

Attorney Skwirz requested the Board to make a motion to direct the attorneys in this matter to prepare a witness list and materials required for this remanded hearing.

Ms. Taylor Humphrey requested that the Board receive prior transcripts in this matter. The Board agreed and wishes to have the opportunity to review said transcripts more than a week in advance in order to be fully prepared to hear this matter.

Mr. Collins made a motion directing both attorneys to prepare a list of witnesses and materials needed for the Board for their consideration in preparation for future hearing of this matter. Mr. Taylor seconded. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Taylor Humphrey.

3. Administrative Matters - Mr. Taylor made a motion to approve the minutes from January and February, 2016. Mr. Collins seconded. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Taylor Humphrey.

4. Adjournment. Mr. Jackson made a motion to adjourn. Mr. Collins seconded. The Vote was Unanimous. Voting were: Ms. Gescheidt, Mr. Collins, Mr. Jackson, Mr. Taylor and Ms. Taylor Humphrey.